

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

RITA F. COBIAN

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-1492

Decision No. CU-1781

AMENDED PROPOSED DECISION

By Proposed Decision dated May 1, 1968, the Commission denied this claim for the reason that claimant had failed to submit evidence relating to ownership, loss or value of the property, subject of the claim. Subsequently, claimant submitted additional evidence, and, upon consideration of this matter, the Proposed Decision is hereby amended.

Claimant stated that for several years prior to the date of loss she has been married to Ricardo Cobian Causa who acquired United States nationality on November 17, 1966; and that prior to their departure in October 1962, claimant and her husband resided in Cuba where they operated the business enterprise known as Laboratorios Victus.

Claimant also stated that her father advanced funds at an unspecified date to finance and start the above business enterprise; that claimant and her husband agreed that while she furnished such funds he would contribute " . . . his work, knowledge and experience of years in this kind of business, plus the clients he acquired through years of hard work in this course . . ."; and that while no legal partnership was established, they shared all profits as husband and wife. Claimant asserted that when leaving Cuba she and her husband also owned household furnishings and an automobile.

According to the community property laws of Cuba, the properties acquired by one or both spouses during the marriage with money of the marriage partnership or by the industry, salary or work of either or both spouses,

and the fruits thereof, belong in equal parts to both spouses (see Claim of Robert L. Cheaney, et ux., Claim No. CU-0915). Accordingly, the property discussed below will be deemed as having been owned by the claimant and her husband, since no evidence has been submitted to establish that such property was acquired by the claimant prior to the marriage, or solely by gift or inheritance. Inasmuch as there is no evidence that claimant's husband was a national of the United States at any time pertinent to this claim and no claim has been filed by him or on his behalf, his interests in the properties will not be considered here.

The claimant asserted that the personal property, subject of the claim, includes the following:

Inventories	\$ 51,660.00
Machinery and equipment	14,025.00
Furniture and fixtures	3,120.00
Trucks	2,000.00
Accounts receivable	62,200.00
Furnishings in home and personal effects	5,000.00
Automobile	<u>2,000.00</u>
Total	\$140,005.00

The claimant submitted several affidavits of persons who were former residents of Cuba with personal knowledge of her ownership interest in the property, including the business enterprise as well as furnishings and effects. The affiants include former business contacts and customers of the claimant, who were associated with claimant and her husband or who bought and sold the products of the business. Additionally, claimant has submitted evidence concerning actions taken toward nationalization or other taking of the property by the Government of Cuba.

The record also includes labels, price lists, medical data and itemized lists of medicines, business and home properties as well as her own affidavits, correspondence and statements in support of the claim. On the basis of the entire record, the Commission finds that under the community property laws of Cuba claimant herein, RITA F. COBIAN, owned a one-half interest in the aforesaid personal property, including the accounts receivable of the business enterprise in Havana, Cuba.

On December 6, 1961, the Cuban Government published its Law 989 which effectively confiscated all assets, personal property and real estate, shares, stocks, bonds and securities of persons who had left the country. As stated, the record reflects that claimant and her husband left Cuba in January 1962.

The Commission finds, in the absence of evidence to the contrary, that the subject real and personal property was taken by the Government of Cuba pursuant to the provisions of Law 989 and that it was taken specifically on October 31, 1962. (See Claim of Wallace Tabor and Catherine Tabor, Claim No. CU-0109, 25 FCSC Semiann. Rep. 53 [July-Dec. 1966].)

The Act provides in Section 503(a) that in making determinations with respect to the validity and amount of claims and value of properties, rights, or interests taken, the Commission shall take into account the basis of valuation most appropriate to the property and equitable to the claimant, including but not limited to fair market value, book value, going concern value, or cost of replacement.

The question, in all cases, will be to determine the basis of valuation which, under the particular circumstances, is "most appropriate to the property and equitable to the claimant". This phraseology does not differ from the international legal standard that would normally prevail in the evaluation of nationalized property. It is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider.

As stated, the claimant has submitted a detailed description of the personal property with other material concerning the value of such property. Additionally, claimant has submitted a detailed list of the medicines, business and household furnishings, equipment, machinery and vehicles, which includes the approximate value of such properties at the time of loss. Claimant has also submitted evidence to establish that she and her husband operated a going concern with sales on credit in part

and the Commission finds that the amount of the accounts receivable is fair and reasonable for this business enterprise.

Based upon the entire record, including evidence available to the Commission concerning the value of similar property in Cuba, the Commission finds that the evaluation most appropriate to the personal property, subject of this claim, is that evaluation given by claimant and the affiants with personal knowledge of the property in question; and that such evaluation is fair and reasonable, and is consistent with the evaluation of like properties in Cuba. Accordingly, the Commission finds that on the date of loss the property had a total value of \$140,005.00, and concludes that claimant, pursuant to the community property laws of Cuba, suffered a loss of \$70,002.50 within the meaning of Title V of the Act.

The Commission has decided that in certifications of loss on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see Claim of Lisle Corporation, Claim No. CU-0644), and in the instant case it is so ordered.

Accordingly, the following Certification of Loss will be entered and in all other respects the Proposed Decision is affirmed.

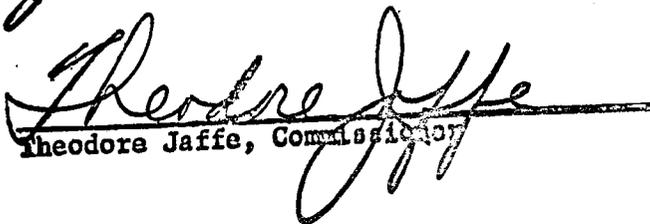
CERTIFICATION OF LOSS

The Commission certifies that RITA F. COBIAN suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Seventy Thousand Two Dollars and Fifty Cents (\$70,002.50) with interest thereon at 6% per annum from October 31, 1962 to the date of settlement.

Dated at Washington, D. C., and entered as the Amended Proposed Decision of the Commission

MAY 12 1971


Lyle S. Garlock, Chairman


Theodore Jaffe, Commissioner

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Amended Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 5(e) and (g), as amended (1970).)

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IN THE MATTER OF THE CLAIM OF

RITA F. COBIAN

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -1492

Decision No. CU 1781

PROPOSED DECISION

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, in the revised amount of \$140,005.00, was presented by RITA G. COBIAN, and is based upon the asserted loss of personal property, including that property utilized in the business enterprise known as Laboratorios Victus, as well as household and personal effects, all located in Havana, Cuba. Claimant has been a national of the United States since her birth.

Under Title V of the International Claims Settlement Act of 1949, [78 Stat. 1110 (1964) 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right, or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated, intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Section 504 of the Act provides, as to ownership of claims, that

(a) A claim shall not be considered under section 503(a) of this title unless the property on which the claim was based was owned wholly or partially, directly or indirectly by a national of the United States on the date of the loss and if considered shall be considered only to the extent the claim has been held by one or more nationals of the United States continuously thereafter until the date of filing with the Commission.

The Regulations of the Commission provide:

The claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim. (FCSC Reg., 45 C.F.R. §531.6(d) (Supp. 1967).)

The claimant herein, RITA F. COBIAN, asserted that she was the owner of business property, doing business under the firm name of Laboratorios Victus, as well as an automobile and certain personal and household effects which were taken by the Government of Cuba in October 1962. The claimant submitted the affidavits of two affiants who were identified as a customer and supplier to this business enterprise, and an affidavit of a former business associate of the claimant who assertedly was a part-owner of the firm prior to loss. Since claimant's assertions of the ownership, loss and value of the properties included in her claim were supported only by her statement and that of the affiants who had business relationships with the firm prior to loss, the Commission suggested in letter of May 31, 1967, that claimant submit additional supporting evidence. Thereafter, by letters of July 19, 1967, and August 15, 1967, the Commission made additional suggestions to claimant concerning the submission of supporting evidence in this matter.

By letter of September 11, 1967, the claimant submitted an additional application form with itemized lists of the business and personal properties included in her claim. However, claimant submitted no additional evidence relating to ownership and loss of the properties and no evidence concerning the value thereof except unsupported evaluations shown by claimant in preparing the lists of personal property. Accordingly, by Commission letters of October 24, 1967, December 11, 1967, and January 18, 1968, the Commission made other suggestions to claimant with respect to obtaining and submitting information and evidence pertaining to the ownership, loss and value of the properties, subject of the claim. No evidence in response to this correspondence has been received to date.

On February 19, 1968, claimant was invited to submit any evidence available to her within 45 days from that date, and she was informed, that, absent such evidence, it might become necessary to determine the claim on the basis of the existing record. No evidence has since been submitted in clarification and support of this claim.

The Commission finds that claimant has not met the burden of proof in that she has failed to establish ownership of rights and interests in property which was nationalized, expropriated or otherwise taken by the Government of Cuba. Accordingly, this claim is denied. The Commission deems it unnecessary to make determinations with respect to other elements of the claim.

Dated at Washington, D.C.,
and entered as the Proposed
Decision of the Commission

MAY 1 1968

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g) as amended, 32 Fed. Reg. 412-13 (1967).)

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